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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/589,062	08/10/2006	Rolf Lehmann	013986-5021US	5821

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MORGAN, LEWIS & BOCKIUS LLP  
1701 MARKET STREET  
PHILADELPHIA, PA 19103-2921

EXAMINER
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NICHOLS II, ROBERT K

ART UNIT	PAPER NUMBER
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3754

MAIL DATE	DELIVERY MODE
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03/01/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/589,062	<b>Applicant(s)</b> LEHMANN, ROLF	
	<b>Examiner</b> ROBERT K. NICHOLS II	<b>Art Unit</b> 3754	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 January 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 2-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 15-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>04/27/2007</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election of Group III – claims 1 and 15-19 in the reply filed on 01/08/2010 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 2-14 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Invention, there being no allowable generic or linking claim.

### ***Specification***

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The disclosure is objected to because of the following informalities: Reference characters "2" and "3" have both been used to designate a metering module.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 15-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 15 recites the limitation "the metering means" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim 16 recites the limitation "the metering device" in line 4. There is insufficient antecedent basis for this limitation in the claim.

Claim 16, line 2 recites "a second axis of the motor." It is unclear as to what is the motor first axis.

Claim 16 recites the limitation "the first axis" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 16 recites "the drive axis of the metering device" in lines 3-4. There is insufficient antecedent basis for this limitation in the claim.

Claim 19 recites "the third axis" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 19 recites “the drive axis” in line 3. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 1 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Long (US 3,151,749).**

Regarding claims 1 and 15, as best understood Long discloses a device for metering bulk material including a drive unit 22 and a metering unit having a metering module 19 and a container 10 (see figs. 1 and 2); a stirring apparatus 14 disposed in the container 10 (see fig. 1); wherein the metering unit forms an exchangeable unit (see fig. 2); and a single motor 34 drives the stirring apparatus 14 and metering means 18 (see figs 1-3 and column 2, lines 67-71).

**Claims 1 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Parkes (US 4,599,809).**

Regarding claims 1, and 15, as best understood Parkes discloses a device for metering bulk material including a drive unit having motor 38 and a metering unit having a metering module 36 and a container 15, wherein a stirring apparatus 34 is disposed in

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the container 15 (see fig. 1); and the single motor 38 drives the stirring apparatus and metering means (see fig. 1 and column 5, lines 14-19). With respect to the limitation "the metering unit forms an exchangeable unit," the Examiner notes due to the fact the components are not permanently fixed they are capable of being dismounted or exchanged. Parkes further discloses the axis of the motor 38 and the axis of the stirring apparatus 34 being arranged substantially parallel (see fig. 1) and each substantially orthogonal to the drive axis of the metering means (screw of module 36; see fig. 1); wherein the motor 38 drives a third axis (shaft axis of member 33) substantially orthogonal thereto (see fig. 1 and column 5, lines 16-19); the third axis being substantially parallel to the drive axis of the metering means in the operating state (fig. 1) and drives the drive axis by at least one of directly and indirectly (see column 5, lines 16-19).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Parkes (US 4,599,809) in view of Rutten et al. (US 4,029,219).**

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Regarding claims 16-19, Parkes discloses a gearbox 37 for driving all the axes by a single motor (fig. 1 and column 5, lines 16-19). However Parkes is silent to a first and a second bevel gear.

Rutten teaches a device for metering bulk material including a single motor 50 for driving a plurality of axes; a gearbox 34/42 having first and second bevel gears permitting the rotation of an axis orthogonal thereto (see figure 8 and column 3, lines 24-31).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the gearbox of the Parkes device, with a first and second bevel gear as taught by Rutten, in order to allow a first shaft to drive a second shaft, having an axis situated orthogonal thereto.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Cook (US 3,064,831), Ford et al. (US 5,287,993), Shaw (US 2,604,217), Bjelkeby (US 5,447,404), Byberg (US 3,143,336), Reed (US 3,064,830) and Nease (US 1,915,750) show other devices.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT K. NICHOLS II whose telephone number is (571)270-5312. The examiner can normally be reached on Mon-Friday 9-5.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R. K. N./  
Examiner, Art Unit 3754

/Kevin P. Shaver/  
Supervisory Patent Examiner, Art  
Unit 3754